



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET S.W.
WASHINGTON D.C. 20554

News media information 202-418-0500
Internet: <http://www.fcc.gov> (or <ftp.fcc.gov>)
TTY (202) 418-2555

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Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 C.F.R. § 1.767(a))

By the Chief, Telecommunications and Analysis Division, International Bureau:

Pursuant to An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 C.F.R. § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this public notice.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. § 1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>.

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. Cable landing licensees should review carefully the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

Amendment

Grant of Authority

Date of Action: 04/13/2021

Amendment filed by Aqua Comms (Americas) Inc. and Aqua Comms (Ireland) Limited (together, Aqua Comms) to the application of Edge Cable Holdings USA, LLC, Aqua Comms (Americas) Inc., Aqua Comms (Ireland) Limited, Cable & Wireless Americas Systems, Inc., and Microsoft Infrastructure Group, LLC for a license to land and operate a non-common carrier fiber-optic submarine cable network connecting Lynn, Massachusetts, Bude, United Kingdom, and Le Porge, France, the Amitié cable system. See Streamlined Submarine Cable Landing License Applications Accepted for Filing, File No. SCL-LIC-20200807-00036, Public Notice, Report No. SCL-00281S (IB, rel. Sept. 4, 2020).

Aqua Comms requests removal of Aqua Comms (Ireland) Limited as a joint applicant. According to Aqua Comms, their plans regarding Amitié have changed and Aqua Comms (Ireland) Limited will not use the U.S. end point of the Amitié cable system or offer capacity services to customers between the United States and the foreign end points of the Amitié cable system in the United Kingdom and France. Consequently, Aqua Comms contends that Aqua Comms (Ireland) Limited no longer satisfies the criteria for an applicant/licensee set out in section 1.767(h) of the Commission's rules, 47 CFR § 1.767(h)(2).

Aqua Comms (Ireland) Limited will continue to hold a 5.63% voting and participation interest in the portion of the system in international waters, and Aqua Comms (Americas) Inc. will remain a joint applicant/licensee for the Amitié cable system.

The cable landing license, as amended, is granted. See SCL-LIC-20200807-00036.

Acceptability for Filing Public Notice: Application filed by Edge Cable Holdings USA, LLC (Edge USA), Aqua Comms (Americas) Inc. (Aqua Comms Americas), Aqua Comms (Ireland) Limited (Aqua Comms Ireland), Cable & Wireless Americas Systems, Inc. (CWAS), and Microsoft Infrastructure Group, LLC (Microsoft Infrastructure) (collectively, Applicants) for a license to land and operate a non-common carrier fiber-optic submarine cable network connecting Lynn, Massachusetts, Bude, United Kingdom, and Le Porge, France, the Amitié cable system. The Application was placed on Public Notice on September 4, 2020. See Streamlined Submarine Cable Landing License Applications Accepted for Filing, File No. SCL-LIC-20200807-00036, Public Notice, Report No. SCL-00281S (IB, rel. Sept. 4, 2020). No comments or oppositions were filed in response to the Public Notice. Aqua Comms Americas and Aqua Comms Ireland filed an amendment on March 21, 2021, seeking to remove Aqua Comms Ireland as a joint applicant. See File No. SCL-AMD-20210321-00018.

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 CFR § 1.767(b), and consistent with the procedures established by the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. December 20, 2001) available at <https://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>. The Department of Justice, on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a letter to defer action on September 9, 2020. The National Telecommunications and Information Administration, on behalf of the Committee, filed a Petition to Adopt Conditions to Authorization and License on April 12, 2021. The Committee has no objection to the Commission approving authority to construct, land, and operate the Amitié cable system, provided that the Commission conditions its approval on the assurances of Edge Cable Holdings USA, LLC, Aqua Comms (Americas) Inc., Cable & Wireless Americas Systems, Inc., and Microsoft Infrastructure Group, LLC to abide by the undertakings set forth in the April 1, 2021 Letter of Assurances from Edge Cable Holdings USA, LLC, Aqua Comms (Americas) Inc., Cable & Wireless Americas Systems, Inc., and Microsoft Infrastructure Group, LLC to the Department of Homeland Security.

Action Taken: (1) Grant of Cable Landing License to Edge Cable Holdings USA, LLC, Aqua Comms (Americas) Inc., Cable & Wireless Americas Systems, Inc., and Microsoft Infrastructure Group, LLC for the purpose of landing and operating a non-common carrier fiber optic submarine cable extending from the United States to the United Kingdom and France; (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 CFR § 1.767(h)(1), in connection with the license; and (3) grant of the Petition to Adopt Conditions to Authorization and License filed by the National Telecommunications and Information Administration on April 12, 2021.

Licensee Information: Applicants for the cable landing license for the Amitié cable system are: (1) Edge Cable Holdings USA, LLC; (2) Aqua Comms (Americas) Inc.; (3) Cable & Wireless Americas Systems, Inc.; and (4) Microsoft Infrastructure Group, LLC.

Edge USA, a Delaware limited liability company, is a wholly owned direct subsidiary of Facebook, Inc. (Facebook), a Delaware corporation that is publicly traded on the NASDAQ Stock Market. CZI Holdings, LLC (CZI), in turn, holds 12.62% of equity and 50.77% of voting interests in Facebook. Mark Zuckerberg, a U.S. citizen who serves as Chairman and CEO of Facebook, owns all of the member interest of CZI. He also holds approximately 13.43% of equity and 58.84% of voting interests in Facebook that include a 50.77% voting interest for shares he holds directly or controls through CZI and a 6.8% voting interest that he has authority to vote pursuant to voting agreements with Dustin Moskovitz as Trustee of The Dustin Moskovitz 2008 Annuity Trust dated March 10, 2008 and as Trustee of The Dustin A. Moskovitz Trust dated December 27, 2005. Applicants state that no other individual or entity has 10% or greater direct or indirect voting or equity interest in Facebook.

Aqua Comms Americas, a Delaware corporation, is a wholly owned, direct subsidiary of America Europe Connect Limited (AEC2), an Ireland entity. AEC2, in turn, is a wholly owned, direct subsidiary of Aqua Comms Connect Limited (Aqua Comms Connect), an Ireland entity. Aqua Comms Connect is a wholly owned, direct subsidiary of Aqua Comms Designated Activity Company (Aqua Comms Parent), an Ireland entity. Aqua Ventures Limited (Aqua Ventures), a Jersey entity, holds 51% of voting and equity interests in Aqua Comms Parent. Aqua Ventures is wholly owned by The 2013 Bake Family Trust, a trust organized in Bailiwick of Jersey, of which Dominion Fiduciary Trust Limited, a Bailiwick of Jersey entity, serves as the trustee of The Bake Family Trust. Christopher Paul Bake, a Netherlands citizen, and his family are the beneficiaries of The 2013 Bake Family Trust. The remaining equity and voting interests in Aqua Comms Parent are held 19.6% by Pangaea Two Acquisition Holdings XV, LLC (Pangaea Holdings), a Delaware entity, 8.8% by Pangaea Two Acquisition Holdings Parallel XV, LLC (Pangaea Holdings Parallel), also a Delaware entity, and 13.8% by Irish Strategic Investment Fund of the National Treasury Management Agency, which is an Ireland sovereign development fund controlled and managed by the Government of Ireland. Pangaea Two LP (Pangaea Two), a Delaware entity, is the sole member of Pangaea Holdings, whereas Pangaea Two Parallel, LP (Pangaea Parallel), a Delaware entity, is the sole member of Pangaea Holdings Parallel. Pangaea Two GP, LP (Pangaea Two GP), a Delaware entity, is the general partner for both Pangaea Two and Pangaea Parallel. Pangaea Two Admin GP, LLC (Pangaea Two Admin), a Cayman Islands entity, is the general partner of Pangaea Two GP, and the managing member of Pangaea Two Admin is Cartesian Capital Group, LLC (Cartesian Capital), a Delaware entity, which is controlled by Peter M. Yu, a U.S. citizen, with equity and voting interests between 50% and 74% in Cartesian Capital.

CWAS, a Delaware corporation, is a wholly owned, indirect subsidiary of Vodafone Group Plc (Vodafone Parent), a U.K. company that is publicly traded on the London Stock Exchange, through a several intermediary U.K.-organized corporate entities. Applicants state that no individual or entity hold 10% or greater direct or indirect voting or equity interest in Vodafone Parent.

Microsoft Infrastructure, a Washington limited liability company, is a wholly owned, direct subsidiary of Microsoft Corporation, also a Washington corporation. Microsoft Corporation is a publicly traded company on the NASDAQ Stock Market, and Applicants state that it has no 10% or greater direct or indirect shareholders.

Cable Design and Capacity: The Amitié cable system will consist of three segments: (1) Segment 1.1 will connect Lynn, Massachusetts with a branching unit in the Atlantic Ocean between the United Kingdom and France with 16 fiber pairs, each having a design capacity of 20.1 terabits per second (Tbps) and using current technology and a length of 5,276 kilometers; (2) Segment 1.2 will connect Bude, United Kingdom with the branching unit with 12 fiber pairs, each having a design capacity of 20.1 Tbps and using current technology and a length of 645 kilometers; and (3) Segment 1.3 will connect Le Porge, France with the branching unit with 12 fiber pairs, each having a design capacity of 20.1 Tbps and using current technology and a length of 871 kilometers. Applicants have yet to decide on the initial lit capacity of the system. Applicants intend to commence commercial operation of the cable system in the first calendar quarter of 2022.

Ownership of the Cable System and Landing Points: The economic and voting interests in the U.S. territory portion of the system will be held 81.25% by Edge USA and 6.25% each by Aqua Comms America, Microsoft Infrastructure, and CWAS. Edge Network Services Limited (Edge Network) will hold 81.90% of economic and voting interests in the international waters portion of the system, 5.46% will be held by Microsoft Ireland Operations Limited, 5.63% by Aqua Comms Ireland and 7.01% by Apollo Submarine Cable System Limited (Apollo Limited). Edge Network will also hold 83.33% of economic and voting interests in the U.K. territory portion of the system, and Aqua Comms (UK) Limited and Apollo Limited will each hold 8.33% of the remaining interests. Orange S.A. will hold 100% of the economic and voting interests in the French territory portion of the system. Applicants state that Edge Network, Aqua Comms (UK) Limited, Microsoft Ireland Operations Limited, Aqua Comms Ireland and Orange S.A. are not required to be applicants for the cable landing license under the Commission's rules, 47 CFR § 1.767(h)(2), as none of them will use the U.S. end points of the Amitié cable system.

The cable stations for the Amitié cable system will be located in Lynn, Massachusetts, Bude, United Kingdom, and Le Porge, France. The system will utilize an existing cable station in Lynn, Massachusetts, which is owned by GTT Americas LCC (GTT) and operated by Edge USA. The system will also utilize an existing cable landing station in Bude, United Kingdom, which is owned and operated by Apollo Limited. The cable station in Le Porge, France will be newly constructed and will be owned and operated by Orange S.A.

Applicants request a waiver of section 1.767(h)(1) so that GTT need not be a joint applicant for the Amitié cable landing license. Section 1.767(h)(1) requires that "any entity that owns or controls a cable landing station in the United States" shall be "applicants for, and licensees on, a cable landing license." 47 C.F.R. § 1.767(h)(1). According to Applicants, although GTT is the owner of the Lynn, Massachusetts cable landing station, it need not be a joint applicant for the Amitié cable landing license as GTT will not have ability to significantly affect the operation of the system under a contract Edge USA will enter into with GTT. Applicants state that Edge USA will also enter into long-term leases for colocation space for power feed equipment for the Lynn cable landing station. Edge USA, therefore, will retain operational authority over the Amitié system landing facilities and provide direction to GTT in all matters relating to the Amitié cable system. According to Applicants, Edge USA will ensure that all indefeasible rights to use (IRUs) and lease agreements have initial terms, with extension options at Edge USA's sole discretion, for a total of 25 years each, coextensive with the term of the cable landing license.

The purpose of the 1.767(h)(1) requirement is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license. See Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22194-95, paras. 53-54. While GTT is the owner of the Lynn, Massachusetts landing station, we find that, based on the record in this proceeding, GTT will not have the ability to affect significantly the operation of the cable system. Accordingly, we grant Applicants a waiver of 1.767(h)(1) and do not require GTT to be the cable landing license for the Amitié cable system.

Regulatory Status of the Cable: Applicants propose to operate the system on a non-common carrier basis. They state that they will not sell the system capacity indifferently to the user public. Applicants state that for Edge USA and its affiliates, the system will provide capacity to support Facebook's global platform to connect its users, points of presence, and data centers. For Microsoft Infrastructure and its affiliates, Applicants assert that the system will provide capacity to support Microsoft's cloud services and connect its data centers and points of presence. Applicants state that the system will provide capacity to support the wholesale capacity business of Aqua Comms Americas, CWAS, and their respective affiliates in Europe and the Americas, offering bulk capacity to particular carrier, enterprise, and government customers pursuant to individually-negotiate IRUs and capacity leases, the terms of which will vary depending on the characteristics and needs of the particular capacity purchaser. Applicants also assert that the Amitié system will enhance competition on the U.S.-U.K., U.S.-France, and broader U.S.-Western Europe routes by competing directly with existing Apollo, Atlantic Crossing-1, FLAG Atlantic-1, GTT Atlantic/GTT Express, TAT-14, TGN Atlantic, TGN Western Europe, Yellow, AE Connect-1, Columbus-III, Havfrue, and Marea systems, as well as the planned Dunant system. In addition, Applicants state that the existence of ample competing submarine cable facilities providing U.S.-U.K., U.S.-France, and U.S.-Western Europe connectivity ensures that the Amitié system would not function as a bottleneck facility on those routes.

Applicants have provided information and demonstrated that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 642 (D.C. Cir 1976) (NARUC I), cert. denied, 425 U.S. 992 (1976). See also Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22202-22203, paras. 69-70; Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Notice of Proposed Rulemaking 15 FCC Rcd 20789, 20815-20818, paras. 62-67.

Conditions and Requirements: Applicants shall comply with the routine conditions specified in section 1.767(g) of the Commission's rules, 47 CFR § 1.767(g), and with the requirements of Section 1.768 of the Commission's rules, § 1.768 (Notification by and prior approval for submarine cable landing licenses that are or propose to become affiliated with a foreign carrier).

We grant the Petition to Adopt Conditions to Authorization and License (Petition) filed in this proceeding by the National Telecommunications and Information Agency, on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, on April 12, 2021. Accordingly, we condition grant of this application on Edge Cable Holdings USA, LLC, Aqua Comms (Americas) Inc., Cable & Wireless Americas Systems, Inc., and Microsoft Infrastructure Group, LLC abiding by the commitments and undertakings contained in the April 1, 2021 Letter of Assurances (LOA) from Edge Cable Holdings USA, LLC, Aqua Comms (Americas) Inc., Cable & Wireless Americas Systems, Inc., and Microsoft Infrastructure Group, LLC to the Acting Under Secretary, Office of Strategy, Policy, and Plans, Department of Homeland Security. A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the cable landing license and thus grounds for declaring the license terminated without further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission. A copy of the Petition and the LOA are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching SCL-LIC-20200807-00036 and accessing "Other filings related to this application" from the Document Viewing area.
